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No. 510

In the Supreme Court of the United States

OCTOBER TERM, 1959

HAMISH SCOTT MACKAY, PETITIONER

v.

EUGENE D. MCALEXANDER, ACTING DISTRICT DIRECTOR, DISTRICT 31, IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statutes involved	2
Statement	6
Argument	14
Conclusion	21

CITATIONS

Cases:

Galvan v. *Press*, 347 U.S. 522	15, 20
Griffin, Ex parte, 237 Fed. 445	20
Harisiades v. *Shaughnessy*, 342 U.S. 580	20
Jay v. *Boyd*, 351 U.S. 345	16
Jimenez v. *Barber*, 235 F. 2d 922, certiorari denied, 355 U.S. 903	16
Jimenez v. *Barber*, 252 F. 2d 550	16
Johannessen v. *United States*, 225 U.S. 227	19
Look Tin Sing, In re, 21 Fed. 905	20
MacKay v. *Boyd*, 218 F. 2d 666, certiorari denied, 350 U.S. 840	8, 15
Mahler v. *Eby*, 264 U.S. 32	16
Niukkanen v. *McAlexander*, No. 130, this Term, certiorari granted, October 12, 1959	11, 20
Perez v. *Brownell*, 356 U.S. 44	20
Pintsch Compressing Company v. *Bergin*, 81 Fed. 140	19
Ricaud v. *American Metal Co.*, 246 U.S. 304	18
Rowoldt v. *Perfetto*, 355 U.S. 115	2, 9, 14-15
Savorgnan v. *United States*, 338 U.S. 491	20
Solvang, In re, 14 Alta. L.R. 84, 43 D. L.R. 519	19
Spratt v. *Spratt*, 4 Pet. 393	19
Tutun v. *United States*, 270 U.S. 568	19

Statutes:

Act of October 16, 1918, 40 Stat. 1012, as amended by Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006	2-3, 7

Statutes—Continued Page

Oct of October 16, 1918, 40 Stat. 1012, 41 Stat. 1008, as amended by Section 23 of the Alien Registration Act of 1940 (54 Stat. 670, 673) ... 3-4
Immigration and Nationality Act of 1952, 66 Stat. 163:
Section 241 (8 U.S.C. 1251) ... 5
Section 244(a) (8 U.S.C. 1254(a)) ... 5-6, 8
Canadian Citizenship Act, R.S.C. 1952, Ch. 33, Section 19 ... 19
Revised Statutes of Canada, 1906, (R.S., ch. 113, ¶ 1 (1886)):
Section 13 ... 17
Section 55 ... 18

Miscellaneous:

Van Dyne, *Citizenship of the United States* (1904) p. 107 ... 18

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OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. I; R. 127) is reported at 268 F. 2d 35. The opinion of the District Court (R. 48) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on June 9, 1959 (Pet. App. II; R. 134). A timely petition for rehearing was denied on August 21, 1959 (Pet. 2). The petition for a writ of certiorari was

filed on November 3, 1959. The jurisdiction of this Court in invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the evidence upon which petitioner has been ordered deported is sufficient to show that his membership in the Communist Party was a "meaningful association" under the rule of *Rowoldt* v. *Perfetto*, 355 U.S. 115.

2. Whether petitioner's application for suspension of deportation was (a) properly heard by the same inquiry officer who considered his deportation, and (b) properly denied on the grounds that he refused to answer questions regarding his activities and associations.

3. Whether petitioner, some seven years after he was ordered deported as an alien having membership in the Communist Party after entry, may attack, in proceedings questioning that order, the validity of a Canadian decree of naturalization which had been accepted for some fifty-three years as having changed the status of his now-deceased father from that of a naturalized American citizen to that of a Canadian citizen.

4. Whether the statute requiring the deportation of an alien because of membership in the Communist Party after entry is unconstitutional as a bill of attainder.

STATUTES INVOLVED

The Act of October 16, 1918, 40 Stat. 1012, as amended by Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006, provided in pertinent part:

[Sec. 1] That any alien who is a member of any one of the following classes shall be excluded from admission into the United States:

* * * *

(2) Aliens who, at any time, shall be or shall have been members of any of the following classes:

* * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States * * *.

* * * *

Sec. 4. (a) Any alien who was at the time of entering the United States, or has been at any time thereafter, * * * a member of any one of the classes of aliens enumerated in section 1(2) of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act, irrespective of the time of their entry into the United States.

* * * *

The Act of October 16, 1918, 40 Stat. 1012, 41 Stat. 1008, as amended by Section 23 of the Alien Registration Act of 1940 (54 Stat. 670, 673), provided in pertinent part:

[Sec. 1] That any alien who, at any time, shall be or shall have been a member of any one of the following classes shall be excluded from admission into the United States:

* * * *

(c) Aliens * * * who are members of or affiliated with any organization, association, society, or group, that believes in, advises, advocates, or teaches: (1) the overthrow by force or violence of the Government of the United States * * *

* * * *

(e) Aliens who are members of or affiliated with any organization, association, society, or group, that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in subdivision (d) [i.e., inter alia, matter advising, advocating or teaching the overthrow by force or violence of the Government of the United States].

* * * *

Sec. 2. Any alien who was at the time of entering the United States, or has been at any time thereafter, a member of any one of the classes of aliens enumerated in section 1 of this Act, shall, upon the warrant of the Attorney General, be taken into custody and deported in the manner provided in the Immigration Act of February 5, 1917. The provisions of this section shall be applicable to the classes of aliens mentioned in this Act irrespective of the time of their entry into the United States.[1]

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[1] These provisions are now incorporated in Section 241 of the Immigration and Nationality Act of 1952 (8 U.S.C. 1251), which reads in pertinent part:

(a) Any alien in the United States * * * shall, upon the order of the Attorney General, be deported who—

Section 244(a)(5) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 214, 215 (8 U.S.C. 1254(a)(5)), provides in pertinent part:

* * * *

(6) is or at any time has been, after entry, a member of any of the following classes of aliens:

* * * *

(C) Aliens who are members of or affiliated with (i) the Communist Party of the United States, * * *;

* * * *

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States * * *;

* * * *

(H) Aliens who are members of or affiliated with any organization that writes, circulates, distributes, prints, publishes, or displays, or causes to be written, circulated, distributed, printed, published, or displayed, or that has in its possession for the purpose of circulation, distribution, publication, issue, or display, any written or printed matter of the character described in paragraph (G) [i.e., inter alia, matter advocating or teaching the overthrow by force, violence, or other unconstitutional means of the Government of the United States];

* * * *

(d) Except as otherwise specifically provided in this section, the provisions of this section shall be applicable to all aliens belonging to any of the classes enumerated in subsection (a), notwithstanding (1) that any such alien entered the United States prior to the date of enactment of this Act [June 27, 1952], or (2) that the facts, by reason of which any such alien belongs to any of the classes enumerated in subsection (a), occurred prior to the date of enactment of this Act.

* * * *

(a) As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who—

* * * * *

(5) is deportable under paragraph (4), (5), (6), (7), * * * of section 241(a) for an act committed or status acquired subsequent to such entry into the United States * * *; has been physically present in the United States for a continuous period of not less than ten years immediately following the commission of an act or the assumption of a status, constituting a ground for deportation, and proves that during all of such period he has been and is a person of good moral character; has not been served with a final order of deportation issued pursuant to this Act in deportation proceedings up to the time of applying to the Attorney General for suspension of deportation; and is a person whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or to his spouse, parent, or child * * *.

STATEMENT

Petitioner, who entered this country as a Canadian national in 1928, seeks review of the judgment of the Court of Appeals affirming the dismissal of his habeas corpus application by the District Court for the District of Oregon. The proceeding had attacked orders directing petitioner's deportation and denying suspension of deportation. He had been ordered deported in 1952 on the ground that he is an alien who after

entry into the United States had become a member of the Communist Party within the meaning of the Act of October 16, 1918, as amended by Section 22 of the Internal Security Act of 1950, 64 Stat. 987, 1006 (*supra*, pp. 3-4).

1. The proceedings

(a). Petitioner was arrested on August 19, 1949, on a warrant issued by the Immigration and Naturalization Service (R. 25-26). A hearing was held on various dates between July 24, 1950, and March 12, 1951. On May 4, 1951, the hearing officer ordered that petitioner be deported on findings that he was an alien who, after entering the United States, became a member of (1) the Communist Party "at least from early in 1936 to September of 1941"; (2) an organization that believed in and advocated the overthrow by force and violence of the United States government; and (3) an organization which distributed literature advocating such overthrow of the government (R. 26-27).

On February 21, 1952,[2] petitioner appealed to the Board of Immigration Appeals, which, on November 10, 1952, affirmed the decision of the hearing officer and dismissed the appeal (R. 27).

On December 15, 1952, petitioner filed a petition for a writ of habeas corpus with the District Court attacking the fairness and impartiality of the depor-

[2] In the intervening period, petitioner filed (on May 7, 1951) a motion to reopen the hearing, which was denied on May 23, 1951, and filed (on January 28, 1952) written exceptions to the report of the hearing officer, which were found to be without merit.

tation hearings and the sufficiency of the evidence to support the finding that he had been a Communist Party member. He also challenged the constitutionality of the statutory provisions under which he was charged, alleging that they amounted to bills of attainder and *ex post facto* laws. The court, after a hearing, found no merit in these contentions and dismissed the petition on February 19, 1953. *MacKay* v. *Boyd* (D.C. D.Ore., Civ. #6748). The Court of Appeals affirmed *per curiam* on February 24, 1955, holding that there was abundant evidence to support the finding that petitioner was a member of the Communist Party. *MacKay* v. *Boyd*, 218 F. 2d 666 (C.A. 9). A petition for a writ of certiorari was denied by this Court on October 10, 1955 (350 U.S. 840), and leave to file a petition for rehearing was denied on May 7, 1956 (351 U.S. 929).

(b). On October 28, 1955, petitioner filed with the Board of Immigration Appeals a motion to reopen the administrative hearing for the purpose of filing an application for suspension of deportation under Section 244(a)(5) of the Immigration and Nationality Act of 1952.[3] The motion was granted and

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[3] Three days later, on October 31, 1955, petitioner again sought a writ of habeas corpus in the District Court, requesting also injunctive relief against his immediate deportation in order that he might await the decision of the Board of Immigration Appeals as to the requested discretionary relief. The petition was denied on the ground that there was no reasonable expectation that deportation would be suspended. *MacKay* v. *Boyd* (D.C. D.Ore., Civ. No. 8333, October 31, 1955). On an immediate appeal, the Court of Appeals granted a restraining order against deportation and delayed consideration of the appeal until the Board of

a hearing held on May 16, 1956. On June 21, 1956, the hearing officer denied the application for suspension of deportation on the ground that petitioner had refused to make full and frank disclosure of matters pertinent to a determination as to whether he merited the relief sought (R. 30-31.) An appeal to the Board of Immigration Appeals was dismissed on November 2, 1956.

(c). On March 5, 1958, petitioner asked the Board of Immigration Appeals for administrative reconsideration of his order of deportation on the basis of this Court's decision of December 9, 1957, in *Rowoldt* v. *Perfetto*, 355 U.S. 115. The Board dismissed the appeal and ordered petitioner to surrender for deportation.

(d). Thereafter, on June 19, 1958, petitioner instituted the instant proceeding for a writ of habeas corpus, urging that the order of deportation was invalid under the *Rowoldt* decision, renewing his contentions as to insufficiency of evidence and unconstitutionality of the statute, and alleging that his application for suspension of deportation had been unfairly heard and arbitrarily denied (R. 3-17). After a hearing held on June 30, 1958 (R. 66-105), petitioner was permitted to amend his complaint to urge, for the first time, the allegation that he was not an alien (R. 62). The amended petition was filed on

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Immigration Appeals could act. On February 17, 1958, after suspension of deportation had been denied and the denial had been affirmed by the Board of Immigration Appeals, the Court of Appeals dismissed the appeal on stipulation of counsel, with leave granted to file an amended petition for habeas corpus.

July 10, 1958 (R. 24-38). On August 15, 1958, the District Court filed its opinion adverse to petitioner (R. 48-57) and dismissed the petition (R. 58). The Court of Appeals affirmed (R. 127-133).

2. The evidence on deportability

(a). At the deportation hearings, the government's evidence included the testimony of four witnesses, all of whom had been active in the Albina Branch of the Communist Party at Portland, Oregon, and all of whom knew petitioner as a Communist active in that branch (Tr. 13-21, 22-27, 440-445, 748-781).

Lee A. Knipe testified that he had been a Communist from 1937 to 1940 and that he had been Educational Director of the branch (Tr. 14, 15). He met petitioner with his wife at the first Party meeting he attended (Tr. 14). He recalled approximately ten closed meetings he attended at which petitioner was present (Tr. 15, 18). Only Communists attended these meetings and they all knew each other (Tr. 15, 18). Knipe was present with petitioner at a Party meeting when the branch executive board selected both of them to attend Communist Party schools and training classes (Tr. 15, 16).

Irene Mahoney, the former wife of Lee Knipe, testified that she had been a Communist from 1938 to 1940 (Tr. 22). She attended closed meetings open only to members of the Party (Tr. 23). Petitioner had been present at four or five of these meetings (Tr. 24).

Robert McClure Hood testified that he had joined the Communist Party in 1940 for the purpose of.

furnishing information regarding Communist activities to the Portland police (Tr. 442, 443). He recalled attending approximately six closed meetings at which petitioner was present (Tr. 445). Petitioner was usually accompanied by his wife, Sylvia (Tr. 452).

Sylvia N. Sivertson, petitioner's wife during the years 1933-1944, appeared under subpoena (Tr. 749), expressing reluctance to testify against her former husband because of their children (Tr. 750). She testified that both she and petitioner had joined the Communist Party, he, two months after their marriage, and she in 1935, at his urging. She executed an application card and was issued a membership book or card. She had examined petitioner's membership book at home. She was secretary of the Albina Branch, Unit 4, and in that capacity collected Party dues, including dues from petitioner. She attended Party meetings with petitioner at homes of friends and at their own home. She remembered that Lee Knipe and Irene Knipe Mahoney were often present at these meetings (Tr. 750-753). Petitioner sometimes presided over these meetings (Tr. 760). The last meeting she could recall at their home was in 1939 (Tr. 756).

Mrs. Sivertson further testified that petitioner had been an active member of the Communist Party. She said he talked about the Party a great deal at the time both to her and to others in her hearing (Tr. 753). As husband and wife they quarrelled about his attendance at so many meetings and his generosity to the Party (Tr. 752, 763). One quarrel

resulted over her refusal to give half of her first paycheck to the Party (Tr. 754). She specifically remembered that the night she returned from the hospital with their first child petitioner worked until 3 a.m. cutting a stencil which read "Join the Communist Party" and which he was to use after that hour to mark sidewalks (Tr. 752). She subsequently saw the stencilled wording on sidewalks (Tr. 753). Petitioner solicited memberships in the Communist Party (Tr. 758). Petitioner and Mrs. Sivertson attended Communist Party schools which were held to teach members, with the aid of textbooks, "Russian history and everything in regard to the Communist Party work—and the fundamentals of Communism, Marxism and Leninism" (Tr. 757).

Petitioner, in defense, offered the testimony of numerous character witnesses and attacked his former wife's credibility. He took the stand in his own behalf and denied having ever been a Communist or having attended any meetings of the Communist Party (Tr. 658, 659, 697, 794, 796). He admitted knowing the government witnesses (Tr. 660, 677, 679).

3. Suspension of deportation

At the reopened hearing on petitioner's application for suspension of deportation, he testified generally as to his family and earnings (Tr. 817-830). He spoke freely regarding his affiliation with the Carpenter's Union and the Oregon Grange (Tr. 831-832). He admitted that he had recently attended meetings, solicited funds for, and partly helped in

the formation of the Oregon Committee for the Protection of the Foreign Born (Tr. 832, 847), but he refused to name the present officers of this organization (Tr. 848) and he persisted in this refusal (Tr. 851, 855) despite the warning of the Special Inquiry Officer that the burden was upon him to establish his right to the relief requested, that it was to his advantage to answer any question propounded him, and that questions relative to organizations to which he had belonged, particularly during the ten year period following the event which was the cause for his being ordered deported, were material to the proceedings (Tr. 849-850). He likewise refused to answer inquiries as to whether he had recently sold literature procured from, or contributed money to, the American Committee for the Protection of the Foreign Born in New York (Tr. 852). He refused to answer whether at a dinner party he had arranged, a Mr. Abner Green of New York was a speaker, whether he had ever paid money to Mr. Green to defray his expenses to come to Oregon, or whether he was acquainted with or had ever met him in Oregon (Tr. 853).

Petitioner's present wife, in testifying, refused to answer whether she held an office in the Oregon Committee for the Protection of the Foreign Born (Tr. 870).

The Special Inquiry Officer noted that "on the record" petitioner had established statutory eligibility, and that the case was one in which the Attorney General might determine whether suspension of deportation was warranted. He said that, in the formulation

of a decision as to whether that discretion should be exercised favorably, there should be some exacting evidence in the record that petitioner since 1941 had followed a "course of action that would persuade the Attorney General * * * that the respondent has actively opposed the doctrine, program, principles and ideology of the Communist Party and that he has not associated, affiliated or contributed time or money to movements sympathetic to the Communist cause * * *". He noted petitioner's refusal to answer questions put to him and reasoned that it might well be inferred from this refusal that a complete disclosure of the facts would not add to his desirability as a resident. He concluded that, even if deportation would cause extreme and unusual hardship, on the basis of the entire record the discretionary relief of suspension of deportation should be denied.

ARGUMENT

1. Culminating the second cycle of attacks on his deportation which he has carried through administrative and judicial tribunals, petitioner again asks this Court, almost eight years after he has been ordered deported, to review the weight and sufficiency of the evidence supporting the deportation order. He concedes that "the factual situation is somewhat different in this case than in *Niukkanen*" (*Niukkanen* v. *McAlexander*, No. 130, this Term, certiorari granted, October 12, 1959), but he argues that he has not been shown by substantial probative evidence to have had the kind of meaningful association with the Communist Party required by this Court in *Row-*

oldt v. *Perfetto*, 355 U.S. 115. (Pet. 7, 8). There is no merit in this contention. As we pointed out in answer to the previous petition for certiorari,[4] even under the narrowest of definitions petitioner's course of conduct denotes the kind of membership in the Communist Party that would place him in the deportable class of aliens.[5]

In his case there was no "bread and butter" motive for joining, as there was in *Rowoldt*. As we have summarized in the Statement, *supra*, the proof did considerably more than show that petitioner attended meetings and paid dues. It showed a continued active interest bordering on dedication. There was testimony that he was affiliated with the Party for a period covering nine years,[5] that he contributed generously to it, that he worked diligently to solicit new members, that he regularly attended meetings, and that he was selected for special training and instruction. As the Court of Appeals said upon this second review, the evidence more than meets the minimum

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[4] In his prior petition for a writ of certiorari, filed on July 20, 1955 (No. 248, O.T. 1955), petitioner argued that the proof of membership in the Communist Party was not "reasonable, substantial, and probative", and, in any case, was not proof of anything more than nominal membership, citing *Galvan* v. *Press*, 347 U.S. 522, 527. After certiorari was denied on October 10, 1955 (350 U.S. 840), petitioner asked for leave to file a petition for rehearing, arguing that the facts in his case were like those in *Rowoldt* in which certiorari was granted on March 26, 1956 (350 U.S. 993, No. 676, O.T. 1955). Leave was denied to petitioner on May 7, 1956 (351 U.S. 929).

[5] The hearing officer's finding related specifically to five years "at least from * * * 1936 to * * * 1941".

requirements of proof to establish Communist Party membership (Pet. 19).

2. There is likewise no merit in petitioner's attack upon the order denying his application for suspension of deportation. The hearing officer's finding that petitioner had "on the record" met statutory eligibility was no more than a conclusion that on the face of his application he had met the statutory standards of eligibility. The granting of ultimate relief is, however, left by the Act to the sound discretion of the Attorney General or his delegate. The statute does not restrict the considerations which may be relied upon, or the procedure by which the discretion should be exercised. *Jay* v. *Boyd*, 351 U.S. 345, 353. The granting of relief is not a matter of right but rather an act of grace. *Jay* v. *Boyd*, *supra*.

The questions asked of petitioner were within a legitimate area of inquiry. See *Jimenez* v. *Barber*, 235 F. 2d 922, 924 (C.A. 9), certiorari denied, 355 U.S. 903. Considering the background of petitioner's zealousness as a Communist, the inquiry officer properly sought to explore his activities since September 1941, so as to determine whether he had given up his Communist connections. Petitioner was warned that his silence would directly affect the determination of the relief requested. In these circumstances it was incumbent upon him to make a full and frank disclosure. But he elected to remain mute and must therefore bear the consequences flowing from his attitude, including the inferences properly to be drawn therefrom. See *Mahler* v. *Eby*, 264 U.S. 32, 42; *Jimenez* v. *Barber*, 252 F. 2d 550, 554 (C.A. 9).

The hearing officer recited fully his reasons for denying relief, specifically noting petitioner's evasiveness and his refusal to answer pertinent questions. The gratuitous assertion that, as a hearing officer in the prior proceeding, the examiner acted on the basis of a preconceived conclusion that he would not grant suspension of deportation to a liar has no basis in this record.

3. For the first time in 1958, more than seven years after he had been ordered deported as an alien who had been a member of the Communist Party, petitioner urged that he was in fact not an alien. He re-asserts this here, basing his argument upon a tortuous construction of asserted facts[6]—conceding.

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[6] These facts, assumed to be true for present purposes, are as follows:

Petitioner's father, James Scott McKay, was born in Scotland. He was naturalized as an American citizen on July 9, 1900, in North Dakota. He married petitioner's mother, a native-born American citizen; on June 19, 1903, in North Dakota, and the couple left immediately for Canada, where petitioner's father had never been prior to this time.

Some two years later, on February 8, 1905, petitioner's father obtained a certificate of naturalization as a Canadian citizen, which was issued upon the order of the supreme court of the "Northwest Territories of the Dominion of Canada", and which recited, *inter alia*, that James S McKay "has duly resided in Canada for the period of three years".

Petitioner was born in Canada on June 10, 1905. His father died in Canada on February 9, 1928, and petitioner last entered the United States from Canada on November 28, 1928 (R. 79-89).

At the time petitioner's father received his certificate of naturalization, the Revised Statutes of Canada (see Chapter 77, Section 18 (1906)) provided that an alien must re-

that he was born in Canada in 1905 after his father had acquired a Canadian certificate of naturalization, but arguing that the purported Canadian naturalization was defective and void in that his father had not in fact met Canadian residence requirements, that his father consequently never lost a prior status as a naturalized citizen of the United States, and that this allegedly-retained right of American citizenship was transferred to petitioner at his birth in Canada.

The many fallacies of this argument are apparent. In the first place, we do not believe that an American court is competent to adjudicate the issue of the validity of petitioner's father's Canadian citizenship under Canadian law. See *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 309, 310. The United States has denied the right of a foreign government to impeach a certificate of naturalization issued by an American court. Van Dyne, *Citizenship of the United States* (1904) p. 107. A Canadian naturalization proceeding results in a final judgment of status and a certificate is, just as in this country, evidence of its own validity.[7] Until set aside within Canada, the certificate should be treated as valid by our courts.

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side within Canada for a term of not less than three years before he could take and subscribe to the oath of residence and allegiance which is a prerequisite to naturalization (R. 44).

[7] The statute in effect at the time petitioner's father was granted a certificate, R.S.C. 1906, c. 77 (R.S., Ch. 113, ¶ 1 (1886)), reads in part:

> "§ 55. Upon the oath being so filed, the person taking it shall be entitled to the benefit of this Act and to

In any event, it is clear that petitioner has no standing to attack the validity of the certificate in this collateral proceeding. A decree of naturalization issued by a United States court is not open to collateral attack, in this country, by a private individual. *Tutun* v. *United States*, 270 U.S. 568, 577-578; *Johannessen* v. *United States*, 225 U.S. 227, 236; *Spratt* v. *Spratt*, 4 Pet. 393; *Pintsch Compressing Company* v. *Bergin*, 84 Fed. 140 (C.C. D.Mass.). Similarly, in Canada, a decree of citizenship is revoked by the government only through a direct proceeding brought to cancel the rights granted under it.[8] Principles of comity and reciprocity would preclude an American court from entertaining a collateral attack brought by an individual upon a decree of naturalization entered in a Canadian court. The court below, in advancing these principles, aptly observed (Pet. 21-22):

> The Canadian citizenship of appellant's father was purportedly in good standing at the time of

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the privileges of British birth within Canada, and shall also * * * be entitled to a certificate * * *.

2. The production of such certificate shall be *prima facie* evidence of the naturalization of such person under this Act, and that he is entitled to and enjoys all the rights and privileges of a British subject.

See *In Re Solvang*, 14 Alta. L.R. 84, 43 D. L.R. 549 (C.A.) where the Alberta court reasons that a certificate of naturalization confers an absolute judgment of status in the court of domicile and as such is entitled to acceptance through international comity by foreign courts.

[8] The Canadian Citizenship Act, R.S.C. 1952, Ch. 33, Section 19, outlines the procedure which must be followed to revoke Canadian citizenship. It includes provisions for notice to the person involved (Sec. 19(3), and the right to an inquiry (Sec. 19(4)).

the father's death. His Canadian naturalization had not been questioned, and he and his family, the Canadian courts and government, and all concerned apparently accepted and treated the father as a Canadian citizen. In view of these circumstances and of the legal principles referred to above, we do not believe that the son may now, after the father's death, and in the courts of the United States, and for the purposes indicated, collaterally attack his father's Canadian citizenship.

Moreover, it seems clear that, quite apart from the validity of the father's Canadian citizenship, his American citizenship was lost by expatriation through the taking of an oath of allegiance to a foreign power. *Ex parte Griffin*, 237 Fed. 445, 451 (N.D. N.Y.); see *Perez* v. *Brownell*, 356 U.S. 44; *Savorgnan* v. *United States*, 338 U.S. 491; *In re Look Tin Sing*, 21 Fed. 905 (C.C. D.Calif.).

4. Finally, petitioner contends that this Court has at no time passed upon the question of whether the Act under which he has been ordered deported is invalid as a bill of attainder.[9] This contention is also urged in *Niukkanen* v. *McAlexander*, No. 130, this Term, certiorari granted on October 12, 1959. In the respondent's brief in opposition to certiorari in that case, the government pointed out that the holdings of this Court in *Galvan* v. *Press*, 347 U.S. 522, and *Harisiades* v. *Shaughnessy*, 342 U.S. 580—that a statute providing for deportation for past member-

[9] Petitioner concedes that the Act has been sustained against contentions that it is an *ex post facto* law and in violation of due process.

ship in the Communist Party does not offend the *ex post facto* clause, or due process generally—are also dispositive of the point that it is a bill of attainder, since only punitive legislation falls within these constitutional prohibitions. Although review has been allowed in *Niukkanen*, we do not believe that there is any occasion to delay action on this petition since we assume that certiorari was not granted on this constitutional issue.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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